

## The Equality Act 2010

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### Introduction

The Equality Act 2010 gathers together various different pieces of equality legislation which have been developed over a number of recent years. Against the background of the UK's increasingly diverse communities this Act plays a major role in recognising the UK's historic commitment to tolerance.

In so far as its key provisions seek to create an inclusive society in which difference is understood and respected, this Act is also an important and significant piece of legislation for Oasis. As we all know, inclusion is an intrinsic and integral part of our ethos.

Good legislation is designed to underpin society and its ways; it is for society, not the law, to determine the way forward. In this respect Oasis has a responsibility to implement its ethos of inclusion not because legislation dictates that inclusion is lawful but because inclusion is the right way to behave.

### 1. Background

In relation to the provision of education, the Equality Act 2010 applies to all maintained and independent schools, including Academies, in England and Wales.

The Act replaces and updates all existing equality legislation.

While there are some key changes and additions enshrined within the Act – most notably the introduction of a Public Sector Equality Duty - the basic intention of the law remains that schools cannot discriminate against students because of their sex, race, disability, religion or belief, sexual orientation. Protection against discrimination now includes two additional categories and so the list extends to include students who are pregnant or have recently given birth, and who are undergoing gender reassignment.

Notwithstanding the ongoing basic intention of the law, the new Act does require some action.

### 2. In summary, by 6 April 2012, Academies need to:

- Be familiar with the changes introduced within the Act
- Be confident that systems and processes meet the requirements of the law
- Publish information **annually** to demonstrate how we are complying with the Public Sector Equality Duty to eliminate discrimination, advance equality of opportunity and foster good relationships between different groups
- Prepare and publish a set of equality objectives **at least every 4 years**

### 3. The purpose of this paper is to

- State the main provisions within the Act in relation to education
- Set out the key changes introduced by the Act
- Provide details of what needs to be put in place by 6 April

Although the Act has implications for OCL as an employer, this document deals with the implications for Academies in relation to educational provision.

### 4. The basis of these notes

**Non Statutory Advice** issued by the DfE provides excellent detailed explanation and exemplification of the Act. **The Equality and Human Rights Commission** has also produced lengthy guidance and interpretation.

<http://www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/a0064570/the-equality-act-2010>

<http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/equality-act-guidance-downloads/>

What follows in this document is a simplification of relevant sections of these documents.

### 5. Main Provisions within the Act as they affect education

**5.1** The Act makes it unlawful for the responsible body of a school to discriminate against, harass or victimise a student or potential student

- in relation to admissions,
- in the way it provides education for students,
- in the way it provides students access to any benefit, facility or service, or
- by excluding a student or subjecting them to any other detriment.

The “responsible body” for Oasis is the OCL board although much of the day to day responsibility is delegated to the Academies Executive and the Principals. The Academy Council also holds responsibility for appeals in relation to admissions and exclusions but ultimately they carry these out under the authority of the OCL board. While they make the final decisions, liability for these decisions is held by the (national) trustees. .

**5.2** The Act deals with the way in which schools treat their students and prospective students: the relationship between one student and another is not within its scope.

**5.3** Responsibility not to discriminate, harass or victimise does not end when a student has left the school, but will apply to subsequent actions connected to the previous relationship between school and student, such as the provision of references on former students or access to “old students ” communications and activities.

**5. 4** The Act defines four kinds of unlawful behaviour – direct discrimination; indirect discrimination; harassment and victimisation.

- Direct discrimination occurs when one person treats another less favourably, because of a protected characteristic, than they treat – or would treat – other people. This describes the most clear-cut and obvious examples of discrimination – for example if a school were to refuse to let a student be a prefect because she is a lesbian.
- Indirect discrimination occurs when a “provision, criterion or practice” is applied generally but has the effect of putting people with a particular characteristic at a disadvantage when compared to people without that characteristic. An example might be holding a parents’ meeting on a Friday evening, which could make it difficult for observant Jewish parents to attend. It is a defence against a claim of indirect discrimination if it can be shown to be “a proportionate means of achieving a legitimate aim”. This means both that the reason for the rule or practice is legitimate, and that it could not reasonably be achieved in a different way which did not discriminate.
- Harassment has a specific legal definition in the Act - it is “unwanted conduct, related to a relevant protected characteristic, which has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person”. This covers unpleasant and bullying behaviour, but potentially extends also to actions which, whether intentionally or unintentionally, cause offence to a person because of a protected characteristic.
- Where schools are concerned, the offence of harassment as defined in this way in the Act applies only to harassment because of disability, race, sex or pregnancy and maternity, and not to religion or belief, sexual orientation or gender reassignment. It is very important to recognise that this does not mean that schools are free to bully or harass students on these other grounds - to do so would still be unlawful as well as unacceptable. Any case against the school would be on grounds of direct discrimination rather than harassment.
- Victimisation occurs when a person is treated less favourably than they otherwise would have been because of something they have done (“a protected act”) in connection with the Act. A protected act might involve, for example, making an allegation of discrimination or bringing a case under the Act, or supporting another person’s complaint by giving evidence or information, but it includes anything that is done under or in connection with the Act. Even if what a person did or said was incorrect or misconceived, for example based on a misunderstanding of the situation or of what the law provides, they are protected against retaliation unless they were acting in bad faith.

**5.5** The Act sets out the Single Public Equality Duty ( see section 7 )

## **6 Summary of the key changes or additions within the Act**

The non-statutory guidance issued by the DfE states very clearly: **“Schools that were already complying with previous equality legislation should not find major differences in what they need to do.”**

However, we do need to be aware of the following points:

### **6.1 Protected Characteristics**

The Act uses the term “protected characteristics” as a way of referring to the categories to which the law applies. It is unlawful for an academy to discriminate against a student or prospective student by treating them less favourably because of their

- sex
- race
- disability
- religion or belief
- sexual orientation
- gender reassignment
- pregnancy or maternity

Appendix 1 sets out the details of the characteristics

## **6.2 Age**

A person’s age is also a protected characteristic in relation to employment, but this does not apply to students in schools. Schools therefore remain free to admit and organise children in age groups and to treat students in ways appropriate to their age and stage of development without risk of legal challenge, even in the case of students over the age of 18.

## **6.3 ‘Association’ and ‘Perception’**

It is unlawful to discriminate because of the sex, race, disability, religion or belief, sexual orientation, gender reassignment or pregnancy or maternity of another person with whom the student is associated.

It is unlawful to discriminate because of a characteristic which you think a person has, even if you are mistaken.

## **6.4 Health**

It is now unlawful for employers to ask health-related questions of applicants before job offer, unless the questions are specifically related to an intrinsic function of the work. We already comply with this.

## **6.5 Parent or Sibling**

It is now unlawful to victimise a child for anything done in relation to the Act by their parent or sibling.

## **6.6 Disability**

The Act extends the reasonable adjustment duty to require schools to provide auxiliary aids and services to disabled students. This will not be introduced until a later date to allow time for planning and informed implementation.

## **6.7 Positive Action**

Students with protected characteristics may be disadvantaged for social or economic reasons or for reasons to do with past or present discrimination. The Act contains provisions which enable schools to take action to tackle the particular disadvantage, different needs or

disproportionately low participation of a particular student group, provided certain conditions are met.

These are known as the positive action provisions and allow (but do not require) schools to take proportionate action to address the disadvantage faced by particular groups of students. Such action could include targeted provision, resources or putting in place additional or bespoke provision to benefit a particular disadvantaged students group.

Positive action is intended to be a measure that will allow schools to provide *additional* benefits to some students to address disadvantage and is not the same as positive discrimination. Positive discrimination would be providing *preferential* treatment for a particular disadvantaged student group that exceeded the positive action conditions.

It is never unlawful to treat disabled students (or applicants) more favourably than non-disabled students (or applicants). That is, a school is permitted to discriminate positively in favour of disabled students (applicants). For example, making allowances for a disabled students' arrival time in class.

## 6.8 Curriculum

The content of the school curriculum has never been caught by discrimination law, and this Act now states explicitly that it is excluded. However the way in which a school provides education – the delivery of the curriculum – is explicitly included.

Excluding the content of the curriculum ensures that schools are free to include a full range of issues, ideas and materials in their syllabus, and to expose students to thoughts and ideas of all kinds, however challenging or controversial, without fear of legal challenge based on a protected characteristic. But schools will need to ensure that the way in which issues are taught does not subject individual students to discrimination.

Some examples can best explain the distinction between content and delivery of the curriculum as the Act applies:

- A boy complains that it is sex discrimination for him to be required to do a module on feminist thought.
- A girl complains that putting *The Taming of the Shrew* on the syllabus is discriminatory; or a Jewish student objects to having to study *The Merchant of Venice*.
- A fundamentalist Christian objects to the teaching of evolution in science lessons unbalanced by the teaching of “intelligent design”.
- A school does a project to mark Gay Pride Week. A heterosexual student claims that he finds this embarrassing and that it discriminates against him on grounds of his sexual orientation; a Christian or a Muslim student objects to it on religious grounds.
- A Muslim student objects to the works of Salman Rushdie being included on a reading list.

All of the above are examples of complaints against the content of the curriculum, and none of them would give rise to a valid complaint under the Act.

However, valid complaints that the curriculum is being delivered in a discriminatory way might well arise in situations such as the following:

- A teacher uses the fact that *The Taming of the Shrew* is a set book to make derogatory generalisations about the inferiority of women, in a way which makes the girls in the class feel belittled. Or, in teaching *The Merchant of Venice*, he encourages the class to laugh at a Jewish student.
- In class discussions, black students are never called on and the teacher makes it clear that she is not interested in their views.
- Girls are not allowed to do design technology or boys are discouraged from doing food technology. This is not intrinsic to the curriculum itself but to the way in which education is made available to students.
- The girls' cricket team are not allowed equal access to the cricket nets, or the boys' hockey team is given far better resources than the girls' team. This would be less favourable delivery of education rather than to do with the sports curriculum per se.

## 7. Public Sector Equality Duty

Schools are currently bound by three separate duties for race, disability and gender. The purpose of the equality duties is not to be process driven and bureaucratic but rather to offer an outcome-based method of ensuring that schools are best meeting the needs of all their students.

The duties provide a framework to help schools tackle persistent and long-standing issues of disadvantage, such as underachievement of boys from certain ethnic groups, gender stereotyping in subject choice and bullying of disabled young people.

The Equality Act introduces a single public sector equality duty, which applies to all protected characteristics.

The Equality Act 2010 introduced a single Public Sector Equality Duty (PSED) that applies to public bodies, including maintained schools and Academies, and which extends to all protected characteristics - race, disability, sex, age, religion or belief, sexual orientation, pregnancy and maternity and gender reassignment. This combined equality duty came into effect in April 2011. It has three main elements. In carrying out their functions, public bodies are required to have due regard to the need to:

- Eliminate discrimination and other conduct that is prohibited by the Act,
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it,
- Foster good relations across all characteristics - between people who share a protected characteristic and people who do not share it.

For schools having "due regard" means:

- Decision makers must be aware of the duty to have "due regard" when making a decision or taking an action and must assess whether it may have implications for people with particular protected characteristics.

- Schools should consider equality implications before and at the time that they develop policy and take decisions, not as an afterthought, and they need to keep them under review on a continuing basis.
- The PSED has to be integrated into the carrying out of the school's functions, and the analysis necessary to comply with the duty has to be carried out seriously, rigorously and with an open mind – it is not just a question of ticking boxes or following a particular process.
- Schools cannot delegate responsibility for carrying out the duty to anyone else.

## **8. Meeting the requirements of the Public Single Equality Duty**

### **8.1 Records and paperwork**

The guidance states that it is good practice for schools to keep a written record to show that they have actively considered their equality duties and asked themselves relevant questions. There is no legal requirement to produce a formal equality impact assessment document, although for key decisions this might be a helpful tool and publishing it will help to demonstrate that the due regard duty is being fulfilled.

If a school does not record its consideration of the general equality duty when making a decision or carrying out a particular function, this does not automatically mean that the duty to have 'due regard' has not been met. However, if challenged, it will be easier for a school to demonstrate that the duty has been met if a record has been made at the time.

### **8.2 Appropriate Compliance**

The Equality Duty is proportionate, and complying with it will look different for organisations of different sizes and with different levels of resources. Therefore, in terms of publishing information and setting equality objectives, the requirements of the duty will not be the same for a small primary school as they are for a large secondary school.

However, all schools do have to:

- a) publish information to demonstrate how they are complying with the Public Sector Equality Duty, and
- b) prepare and publish equality objectives.

Schools have until 6 April 2012 to publish their initial information and first set of objectives. We will then need to update the published information at least **annually** and to publish objectives at least **once every four years**.

### **8.3 Data**

Broadly speaking, schools must ensure that individuals are not able to be identified through the publication of data.

The government is clear that the new duties should not be overly burdensome on schools. Schools will not be required to collect any statistical data which they do not already collect routinely.

It is also important to note that the published information does not necessarily have to be statistical data. Many other kinds of information can be used to show how the school is promoting equality, such as publishing its policies online, or publishing minutes of Academy Council meetings.

## **8.4 Publishing information**

It is probably helpful to consider what kind of information will be relevant to showing how each of the three limbs of the duty is being addressed.

### **8.4.1 Eliminating discrimination and other conduct that is prohibited by the Act**

- Evidence that the Academy is aware of the requirements of the Act and determined to comply with the non-discrimination provisions will be relevant here. This might include copies of any of a range of policies (for example, the behaviour policy or anti-bullying policy, or the recruitment policies) where the importance of avoiding discrimination and other prohibited conduct is expressly noted.
- If there has been a meeting of staff or of the AC where they are reminded of their responsibilities under the Act, a note of that meeting could also be useful evidence that due regard is being had to this part of the duty.
- Evidence of staff training on the Equality Act would also be appropriate, as would a note of how the Academy monitors equality issues.

### **8.4.2 Advancing equality of opportunity between people who share a protected characteristic and people who do not share it**

Advancing equality of opportunity involves, in particular:-

- Removing or minimising disadvantages suffered by people which are connected to a particular characteristic they have (for example disabled students , or gay students who are being subjected to homophobic bullying);
- Taking steps to meet the particular needs of people who have a particular characteristic (for example enabling Muslim students to pray)
- Encouraging people who have a particular characteristic to participate fully in any activities (for example encouraging both boys and girls, and students from different ethnic backgrounds, to be involved in the full range of Academy opportunities).
- Attainment data which shows how students with different characteristics (e.g. boys or girls) are performing will obviously be relevant here, in particular in helping to identify whether there are areas of inequality which may need to be addressed. RAISE online contains much detailed analysis by relevant characteristics.

To show that due regard is being had to the importance of advancing equality of opportunity, you will also need to include information about the steps you have taken in response to your analysis of the available data – for example, work being done to support disabled children, or special steps taken to help boys improve their performance in writing or girls to catch up in science, or to boost the English language skills of bi-lingual children from certain minority ethnic groups. None of this needs to be complicated; most of the information will already be contained in easily available documents such as reports to the Academy Council. Evidence which shows e.g. a decline in bullying of disabled children, or a decrease in homophobic or transphobic bullying, would also be relevant here.



For some protected characteristics – religion, and particularly sexual orientation, for example - statistical data about students is less likely to be available, and it may well not be considered appropriate to try to obtain it. More general data about the issues associated with these particular protected characteristics may help to promote awareness. Such information (or links to/extracts from it) may be included among Academy published material, alongside information about any initiatives taken, or policies developed, to promote equality for particular groups (such as measures to address racist or homophobic bullying).

#### **8.4.3 Fostering good relations across all characteristics - between people who share a protected characteristic and people who do not share it**

It should be particularly easy for Oasis to demonstrate that we are fostering good relations since promoting good relations between people and groups of all kinds is inherent in our ethos. It may be shown through – for example - aspects of the curriculum which promote tolerance and friendship e.g. 100 days of peace making, or which share understanding of a range of religions or cultures, the behaviour and anti-bullying policies, assemblies dealing with relevant issues, involvement with the local communities, our global partnerships which enable students to meet and exchange experiences with children from different backgrounds, or initiatives to deal with tensions between different groups of students within the Academy itself.

#### **8.5 Engagement**

When deciding what to do to tackle equality issues, you may want to consult and engage both with people affected by their decisions - parents, students, staff, members of the local community – and with people who have special knowledge which can inform the school's approach, such as disability equality groups and other relevant special interest organisations. Evidence of this engagement can also usefully be included in the published material showing how the duty has been addressed.

#### **8.6 How to Publish Information**

It will be up to schools themselves to decide in what format they publish equality information. The simplest approach may be to set up an equalities page on your website where all this information is present or links to it are available. The regulations are not prescriptive and it will be entirely up to schools to decide how they publish the information, so long as it is accessible to those members of the school community and the public who want to see it.

#### **8.7 Equality Objectives**

Schools are free to choose the equality objectives that best suit their individual circumstances and contribute to the welfare of their students and the school community. Objectives are not intended to be burdensome or a 'tick box' exercise, but they do need to be specific and measurable.

They should reflect the overall direction of your ADP and be used as a tool to help improve the Academy experience of a range of different students. You can set as many objectives as it believes are appropriate to its size and circumstances.

Equality objectives should arise from analysis that you have carried out on your published data or other information. Please use Raise Online as your key tool in this exercise. Some examples might be:

- to increase participation by black students in after school activities;
- to narrow the gap in performance of disabled students;
- to increase understanding between religious groups;
- to reduce the number of homophobic incidents;
- to raise attainment in English for boys;
- to recognise needs of growing numbers of new immigrant groups;
- to encourage girls to consider non-stereotyped career options;
- to anticipate the needs of incoming students from a new group, such as traveller children.

Working examples could include:

- You identify that boys are underachieving academically in maths. Average scores show that 72% of girls are achieving the expected levels, while the figure for boys is 48%. The Academy decides to set an objective to improve this figure over a three year period to 68% of boys reaching the required grade.

Objective: By July 2014, the percentage of boys achieving Level 4+ in maths will have increased by 20%.

- You are aware that there are incidents of bullying by heterosexual friends of homosexual students.

Objective: To raise the issue of homophobic bullying in all its manifestations, through assemblies, tutor group discussions and through a re-emphasis within the PSHE curriculum, so that

- there is an immediate increase in the reporting of such incidents using the formal processes
- six months from now there is a reduction in incidents

- You know that events, including parents' evenings, are poorly attended by the local Turkish community ( 2%), whose children currently make up 35% of the student roll.

Objective: Over the next academic year, we will introduce new approaches e.g. culturally specific events , change parents' evening times to encourage members of our local Turkish community to attend Academy events, so that the registers of attendance shows at least 15% attendance from that community.

Publication of information in future years should include evidence of the steps being taken and progress made towards meeting the equality objectives that the school has already set itself.

## 9. Proposal

The following section proposes how we can meet the publishing requirements of the Act without generating significant additional workload.

OCL will produce a template for an Equality Report for each Academy to adapt/tailor to reflect its own details. The report includes the following:

### In relation to the Equality Act itself:

- A brief description of the Act and its main provisions in relation to education
- The Academy's commitment to comply with the requirements of the Act
- That all staff have been briefed on the provisions as they relate to education
- That the statement is made available to all staff in the staff handbook and displayed on the local VLE in staff information section
- That the statement is available to all parents in the home school agreement and when appropriate in the school prospectus.
- That all members of the Academy Council have been briefed about the Act and its provisions; that an Equality link person has been appointed.

### In relation to Equality Policies

- That OCL has the following policies in operation and that these have been reviewed in light of the imperatives of the Equality Act 2010

Student Policies	HR Policies	IT Policies
<ul style="list-style-type: none"> <li>• Sex Education</li> <li>• Screening, searching &amp; confiscating</li> <li>• SEND</li> <li>• Teaching &amp; Learning</li> <li>• Promoting student welfare &amp; child protection</li> <li>• Medical recruitment of students</li> <li>• Offsite activities &amp; education visits</li> <li>• Parent code of conduct</li> <li>• Parental complaints</li> <li>• Physical intervention</li> <li>• Anti-bullying</li> <li>• Behaviour for learning</li> <li>• Disability Equality</li> <li>• Equality Opportunities for students</li> <li>• Gender Equality Inclusion</li> </ul>	<ul style="list-style-type: none"> <li>• Equal Opportunities &amp; Diversity</li> <li>• Allegation against member of staff</li> <li>• Recruitment &amp; selection</li> <li>• Managing personal relationships at work</li> <li>• Capability</li> <li>• Grievance procedures</li> <li>• Protection for harassment at work</li> <li>• Staff discipline</li> <li>• Staff induction</li> <li>• Staff performance management</li> <li>• Staff professional development</li> <li>• Whistle blowing policy</li> <li>• Working beyond normal retirement age</li> </ul>	<ul style="list-style-type: none"> <li>• E Safety</li> <li>• Mobile phone &amp; internet connector</li> </ul>

### **In relation to Equality Data**

- That the Academy is aware of the data relating to its students through the Raise on line statistics
- That the Academy Leadership Team has scrutinised the data and analysed attainment, progress, attendance, persistent absence and exclusions in the light of equality of all groups defined by Raise
- As a result of doing this the Academy Leadership Team has identified gaps which need to be closed

### **In relation to Equality Objectives**

- That the analysis of the data has led the Academy Leadership Team to identify equality objectives
- That the objectives will be kept under review by the Academy Leadership Team and will be re-visited as part of the Academy's quality assurance programme
- That progress against the objectives will be reviewed by the Academy Council Equality Link Person and considered twice annually by those responsible for governance of OCL at the Strategic Review Meetings

### **In relation to Impact Assessment**

- That the Academy nominates an Equality Champion from within the leadership team who is tasked with ensuring that three simple Equality Impact Assessment questions are routinely considered whenever a shift in either policy or practice is proposed.
  - What will the impact of this action be on students or others with protected characteristics?
  - Could this action result in discrimination, harassment or victimisation?
  - Will the overall impact of this action be positive or negative?

## Appendix 1

### Protected characteristics

The protected characteristics for the schools' provisions are:

- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Age and marriage and civil partnership are NOT protected characteristics for the schools provisions.

#### Disability

A person is a disabled person (someone who has the protected characteristic of disability) if they have a physical and/or mental impairment which has what the law calls 'a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities'.

There is no need for a person to have a medically diagnosed cause for their impairment; what matters is the effect of the impairment not the cause.

In relation to physical impairment:

- Conditions that affect the body such as arthritis, hearing or sight impairment (unless this is correctable by glasses or contact lenses), diabetes, asthma, epilepsy, conditions such as HIV infection, cancer and multiple sclerosis, as well as loss of limbs or the use of limbs are covered.
- HIV infection, cancer and multiple sclerosis are covered from the point of diagnosis.
- Severe disfigurement (such as scarring) is covered even if it has no physical impact on the person with the disfigurement, provided the long-term requirement is met (see below).
- People who are registered as blind or partially sighted, or who are certified as being blind or partially sighted by a consultant ophthalmologist, are automatically treated as disabled under the Act.
- Mental impairment includes conditions such as dyslexia and autism as well as learning disabilities such as Down's syndrome and mental health conditions such as depression and schizophrenia.

The other tests to apply to decide if someone has the protected characteristic of disability are:

The length the effect of the condition has lasted or will continue: it must be long term. 'Long term' means that an impairment is likely to last for the rest of the person's life, or has lasted at least 12 months or where the total period for which it lasts is likely to be at least 12

months. If the person no longer has the condition but it is likely to recur or if the person no longer has the condition, they will be considered to be a disabled person.

Whether the effect of the impairment is to make it more difficult and/or time-consuming for a person to carry out an activity compared to someone who does not have the impairment, and this causes more than minor or trivial inconvenience.

If the activities that are made more difficult are 'normal day-to-day activities' at work or at home.

Whether the condition has this impact without taking into account the effect of any medication the person is taking or any aids or assistance or adaptations they have, like a wheelchair, walking stick, assistance dog or special software on their computer. The exception to this is the wearing of glasses or contact lenses where it is the effect while the person is wearing the glasses or contact lenses, which is taken into account.

For example: Someone who has ADHD might be considered to have a disability even if their medication controls their condition so well that they rarely experience any symptoms, if without the medication the ADHD would have long-term adverse effects.

Progressive conditions and those with fluctuating or recurring effects are included, such as depression, provided they meet the test of having a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.

## **Gender reassignment**

Gender reassignment is a personal process (rather than a medical process) which involves a person expressing their gender in a way that differs from or is inconsistent with the physical sex they were born with.

This personal process may include undergoing medical procedures or, as is more likely for school students, it may simply include choosing to dress in a different way as part of the personal process of change.

A person will be protected because of gender reassignment where they:

- make their intention known to someone – it does not matter who this is, whether it is someone at school or at home or someone like a doctor:
- once they have proposed to undergo gender reassignment they are protected, even if they take no further steps or they decide to stop later on
- they do not have to have reached an irrevocable decision that they will undergo gender reassignment, but as soon as there is a manifestation of this intention they are protected
- start or continue to dress, behave or live (full-time or part-time) according to the gender they identify with as a person
- undergo treatment related to gender reassignment, such as surgery or hormone therapy, or
- have received gender recognition under the Gender Recognition Act 2004.

It does not matter which of these applies to a person for them to be protected because of the characteristic of gender reassignment.

This guidance uses the term 'transsexual person' to refer to someone who has the protected characteristic of gender reassignment.

## **Pregnancy and maternity**

The Act now lists pregnancy and maternity as a protected characteristic.

## **Race**

Race means a person's:

- colour, and/or
- nationality (including citizenship), and/or
- ethnic or national origin
- and a racial group is composed of people who have or share a colour, nationality or ethnic or national origins.

A person has the protected characteristic of race if they belong to a particular racial group, such as 'British people'.

Racial groups can comprise two or more racial groups such as 'British Asians'.

## **Religion or belief**

The protected characteristic of religion or belief includes any religion and any religious or philosophical belief. It also includes a lack of any such religion or belief.

A religion need not be mainstream or well known to gain protection as a religion. It must, though, be identifiable and have a clear structure and belief system. Denominations or sects within religions may be considered a religion. Cults and new religious movements may also be considered religions or beliefs.

Belief means any religious or philosophical belief and includes a lack of belief.

'Religious belief' goes beyond beliefs about and adherence to a religion or its central articles of faith and may vary from person to person within the same religion.

A belief which is not a religious belief may be a philosophical belief, such as humanism or atheism.

A belief need not include faith or worship of a god or gods, but must affect how a person lives their life or perceives the world.

For a belief to be protected by the Equality Act:

- It must be genuinely held.

- It must be a belief and not an opinion or viewpoint based on information available at the moment.
- It must be a belief as to a weighty and substantial aspect of human life and behaviour.
- It must attain a certain level of cogency, seriousness, cohesion and importance.
- It must be worthy of respect in a democratic society.
- It must be compatible with human dignity and not conflict with the fundamental rights of others.

## **Sex**

A person's sex refers to the fact that they are male or female. In relation to a group of people, it refers to either men or women or to either boys or girls.

## **Sexual orientation**

Sexual orientation means the attraction a person feels towards one sex or another (or both), which determines who they form intimate relationships with or are attracted to.

Some people are only attracted to those of the same sex (lesbian women and gay men).

Some people are attracted to people of both sexes (bisexual people).

Some people are only attracted to the opposite sex (heterosexual people).

Everyone is protected from being treated worse because of sexual orientation, whether they are bisexual, gay, lesbian or heterosexual.

Sexual orientation discrimination also covers discrimination connected with manifestations of that sexual orientation.